

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 132

96TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, April 7, 2011, with recommendation that the Senate Committee Substitute do pass.

0896S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 385.206, and 385.208, RSMo, and to enact in lieu thereof six new sections relating to motor vehicle extended service contracts, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 385.206, and 385.208, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 385.205, 385.206, 385.207, 385.208, 385.209, and 385.211, to read as follows:

385.205. 1. It is unlawful for any provider that has authorized a motor vehicle extended service contract with a consumer to fail to cause delivery to the consumer of a fully executed motor vehicle extended service contract within a commercially feasible time period, but no more than forty-five days from the date the consumer's initial payment is processed. It is the mailing, or actual delivery of the fully executed contract, whichever is earlier, that commences the free look period under subsection 14 of section 385.206.

2. It is unlawful for any provider, administrator, producer, or any other person who offers to a consumer a motor vehicle extended service contract, to fail, upon request, to cause delivery to the consumer of an unsigned copy of the written contract prior to the time the consumer's initial payment is processed. An offeror may comply with this provision by providing the consumer with the copy or by directing the consumer to a website containing an unsigned copy of the service contract.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **3. A violation of this section is a level two violation under**
18 **section 374.049.**

 385.206. 1. [No person shall directly] **It is unlawful for any person**
2 **in or from this state to** sell, offer [for sale], **negotiate**, or solicit [the sale of]
3 a motor vehicle extended service contract [to] **with** a consumer, other than the
4 following:

5 (1) **A motor vehicle dealer licensed under sections 301.550 to**
6 **301.573, along with its authorized employees offering the service**
7 **contract in connection with the sale of either a motor vehicle or vehicle**
8 **maintenance or repair services;**

9 (2) A manufacturer of motor vehicles, as defined in section 301.010, **along**
10 **with its authorized employees;**

11 (3) A federally insured depository institution, **along with its**
12 **authorized employees;**

13 (4) A lender licensed and defined under sections 367.100 to 367.215,
14 **along with its authorized employees; [or]**

15 (5) [An administrator, provider, manufacturer, or person working in
16 concert with an administrator, provider, or manufacturer marketing or selling a
17 motor vehicle extended service contract demonstrating] **A provider registered**
18 **with the director and having demonstrated** financial responsibility as [set
19 forth] **required** in section 385.202, **along with its authorized employees; or**

20 **(6) A business entity producer or individual producer licensed**
21 **under section 385.207.**

22 2. No administrator or provider shall use a dealer as a fronting company,
23 and no dealer shall act as a fronting company. For purposes of this subsection,
24 "fronting company" means a dealer that authorizes a third-party administrator
25 or provider to use its name or business to evade or circumvent the provisions of
26 subsection 1 of this section.

27 3. Motor vehicle extended service contracts issued, sold, or offered [for
28 sale] in this state shall be written in clear, understandable language, and the
29 entire contract shall be printed or typed in easy-to-read type and conspicuously
30 disclose the requirements in this section, as applicable.

31 4. Motor vehicle extended service contracts insured under a
32 reimbursement insurance policy under subsection 3 of section 385.202 shall
33 contain a statement in substantially the following form: "Obligations of the
34 provider under this service contract are guaranteed under a service contract

35 reimbursement insurance policy. If the provider fails to pay or provide service
36 on a claim within sixty days after proof of loss has been filed, the contract holder
37 is entitled to make a claim directly against the insurance company." A claim
38 against the provider also shall include a claim for return of the unearned provider
39 fee. The motor vehicle extended service contract also shall state conspicuously
40 the name and address of the insurer.

41 5. Motor vehicle extended service contracts not insured under a
42 reimbursement insurance policy pursuant to subsection 3 of section 385.202 shall
43 contain a statement in substantially the following form: "Obligations of the
44 provider under this service contract are backed only by the full faith and credit
45 of the provider (issuer) and are not guaranteed under a service contract
46 reimbursement insurance policy." A claim against the provider also shall include
47 a claim for return of the unearned provider fee. The motor vehicle extended
48 service contract also shall state conspicuously the name and address of the
49 provider.

50 6. Motor vehicle extended service contracts shall identify any
51 administrator, the provider obligated to perform the service under the contract,
52 the motor vehicle extended service contract seller, and the service contract holder
53 to the extent that the name and address of the service contract holder has been
54 furnished by the service contract holder.

55 7. Motor vehicle extended service contracts shall state conspicuously the
56 total purchase price and the terms under which the motor vehicle extended
57 service contract is sold. The purchase price is not required to be preprinted on
58 the motor vehicle extended service contract and may be negotiated at the time of
59 sale with the service contract holder.

60 8. If prior approval of repair work is required, the motor vehicle extended
61 service contracts shall state conspicuously the procedure for obtaining prior
62 approval and for making a claim, including a toll-free telephone number for claim
63 service and a procedure for obtaining emergency repairs performed outside of
64 normal business hours.

65 9. Motor vehicle extended service contracts shall state conspicuously the
66 existence of any deductible amount.

67 10. Motor vehicle extended service contracts shall specify the merchandise
68 and services to be provided and any limitations, exceptions, and exclusions.

69 11. Motor vehicle extended service contracts shall state the conditions
70 upon which the use of nonoriginal manufacturer's parts, or substitute service,

71 may be allowed. Conditions stated shall comply with applicable state and federal
72 laws.

73 12. Motor vehicle extended service contracts shall state any terms,
74 restrictions, or conditions governing the transferability of the motor vehicle
75 extended service contract.

76 13. Motor vehicle extended service contracts shall state **that subsequent**
77 **to the required free look period specified in subsection 14 of this**
78 **section, a service contract holder may cancel the contract at any time**
79 **and the provider shall refund to the contract holder one hundred**
80 **percent of the unearned pro rata provider fee, less any claims paid. A**
81 **reasonable administrative fee may be surcharged by the provider in an**
82 **amount not to exceed fifty dollars. All [the] terms, restrictions, or**
83 conditions governing termination of the service contract by the service contract
84 holder **shall be stated.** The provider of the motor vehicle extended service
85 contract shall mail a written notice to the contract holder within fifteen **business**
86 days of the date of termination.

87 14. Motor vehicle extended service contracts shall [require] **contain a**
88 **free look period that requires** every provider to permit the service contract
89 holder to return the contract **to the provider** within at least twenty business
90 days of **the** mailing date of the motor vehicle extended service contract or [within
91 at least ten days if] **the contract date if** the service contract is **executed and**
92 delivered at the time of sale or within a longer time period permitted under the
93 contract. If no claim has been made under the contract **and the contract is**
94 **returned**, the contract is void and the provider shall refund to the contract
95 holder the full purchase price of the contract. **If a claim has been made**
96 **under the contract during the free look period and the contract is**
97 **returned, the provider shall refund to the contract holder the full**
98 **purchase price less any claims that have been paid.** A ten percent penalty
99 per month shall be added to a refund that is not paid within thirty days of return
100 of the contract to the provider. The applicable free-look time periods on service
101 contracts shall apply only to the original service contract purchaser.

102 15. Motor vehicle extended service contracts shall set forth all of the
103 obligations and duties of the service contract holder, such as the duty to protect
104 against any further damage and the requirement for certain service and
105 maintenance.

106 16. Motor vehicle extended service contracts shall state clearly whether

107 or not the service contract provides for or excludes consequential damages or
108 preexisting conditions.

109 **17. The contract requirements of subsections 3 to 16 of this**
110 **section shall apply to motor vehicle extended service contracts made**
111 **with consumers in this state. A violation of subsections 3 to 16 of this**
112 **section is a level two violation under section 374.049.**

113 **18. A violation of subsections 1 or 2 of this section is a level**
114 **three violation under section 374.049.**

385.207. 1. A business entity, prior to selling, offering,
2 **negotiating, or soliciting a motor vehicle extended service contract**
3 **with a consumer under subdivision (6) of subsection 1 of section**
4 **385.206, shall apply for and obtain licensure with the director as a**
5 **business entity producer in accordance with this section.**

6 **2. A business entity applying for a producer license under**
7 **sections 385.200 to 385.220 shall make application to the director on an**
8 **application made available by the director and shall pay an initial and**
9 **renewal licensure fee in an amount to be determined by the director,**
10 **but which shall not exceed one hundred dollars for a business entity.**

11 **3. An individual, prior to selling, offering, negotiating, or**
12 **soliciting a motor vehicle extended service contract with a consumer**
13 **under subdivision (6) of subsection 1 of section 385.206, shall apply for**
14 **and obtain licensure with the director as an individual producer in**
15 **accordance with this section.**

16 **4. An individual applying for a producer license under section**
17 **385.200 to 385.220 shall make application to the director on an**
18 **application made available by the director and shall pay an initial and**
19 **renewal licensure fee in an amount to be determined by the director,**
20 **but which shall not exceed twenty-five dollars for an individual**
21 **producer. No examination of an applicant under this subsection shall**
22 **be required.**

23 **5. Unless licensure is refused by the director under section**
24 **385.209, persons applying for license under this section shall be issued**
25 **a producer license for a term of two years. A producer's license shall**
26 **be renewed biennially upon application for renewal and payment of the**
27 **fee. Such license shall continue in effect unless terminated under**
28 **subsection 6 of this section, or refused, revoked, or suspended under**
29 **section 385.209.**

30 **6. A producer license issued under this section, if not renewed**
31 **by the director by its expiration date, shall terminate on its expiration**
32 **date and shall not after that date authorize its holder under sections**
33 **385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle**
34 **extended service contracts.**

35 **7. In connection with a business entity's application as a**
36 **producer and at renewal, the business entity shall provide a list to the**
37 **director of all locations in this state at which it offers motor vehicle**
38 **extended service contracts.**

39 **8. The director shall adopt rules under section 385.218 relating**
40 **to licensing and practices of persons acting as a producer under this**
41 **section.**

 385.208. 1. [A provider shall not] **It is unlawful for a provider,**
2 **administrator, producer, or any other person selling, offering,**
3 **negotiating, or soliciting a motor vehicle extended service contract to:**

4 **(1) Use in its name the words insurance, casualty, guaranty, warranty,**
5 **surety, mutual, or any other words descriptive of the insurance, casualty,**
6 **guaranty, or surety business, nor shall such [provider] person use a name**
7 **deceptively similar to the name or description of any insurance or surety**
8 **corporation, or any other provider[. This section shall not apply to a company],**
9 **provided that this prohibition shall not apply to any provider or**
10 **administrator that was using any of the prohibited language in its name prior**
11 **to [August 28, 2007. However, a company using the prohibited language in its**
12 **name shall disclose] January 1, 2011, and it discloses** conspicuously in its
13 **motor vehicle extended service contract the following statement: "This agreement**
14 **is not an insurance contract.";**

15 **(2) Directly or indirectly, represent in any manner, whether by**
16 **telemarketing, broadcast marketing, electronic media, written**
17 **solicitation or any other advertisement, offer, or solicitation, a false,**
18 **deceptive, or misleading statement with respect to:**

19 **(a) An affiliation with a motor vehicle manufacturer or dealer;**

20 **(b) Possession of information regarding a motor vehicle owner's**
21 **current motor vehicle manufacturer's original equipment warranty;**

22 **(c) The expiration of a motor vehicle owner's current motor**
23 **vehicle manufacturer's original equipment warranty;**

24 **(d) A requirement that such motor vehicle owner register for a**
25 **new motor vehicle extended service contract with such provider in**

26 **order to maintain coverage under the motor vehicle owner's current**
27 **motor vehicle extended service contract or manufacturer's original**
28 **equipment warranty; or**

29 **(e) Any term or provision of a motor vehicle extended service**
30 **contract.**

31 **A violation of this subsection is a level three violation under section**
32 **374.049.**

33 **2. [A provider or its representative shall not in its motor vehicle extended**
34 **service contracts or literature make, permit, or cause to be made any false or**
35 **misleading statement, or deliberately omit any material statement that would be**
36 **considered misleading if omitted, in connection with the sale, offer to sell or**
37 **advertisement of a motor vehicle extended service contract] It is unlawful for**
38 **any person, in connection with the offer, sale, solicitation, or**
39 **negotiation of a motor vehicle extended service contract, directly or**
40 **indirectly to:**

41 **(1) Employ any deception, device, scheme, or artifice to defraud;**

42 **(2) As to any material fact, make or use any misrepresentation,**
43 **concealment, or suppression;**

44 **(3) Engage in any pattern or practice of making any false**
45 **statement of material fact; or**

46 **(4) Engage in any act, practice, or course of business which**
47 **operates as a fraud or deceit upon any person.**

48 **A violation of this subsection is a level three violation under section**
49 **374.049.**

50 **3. Any person who knowingly employs, uses, or engages in any**
51 **conduct in violation of subsection 2 of this section with the intent to**
52 **defraud shall be guilty of a felony and, upon conviction, may be subject**
53 **to imprisonment for a term not to exceed ten years. In addition to any**
54 **fine or imprisonment imposed, a court may order restitution to the**
55 **victim.**

56 **4. A person, such as a bank, savings and loan association, lending**
57 **institution, manufacturer or seller of any product, shall not require the purchase**
58 **of a service contract as a condition of a loan or a condition for the sale of any**
59 **property. A violation of this subsection is a level one violation under**
60 **section 374.049.**

385.209. 1. The director may suspend, revoke, refuse to issue, or
2 **refuse to renew a registration or license under sections 385.200 to**

3 385.220 for any of the following causes, if the applicant or licensee has:

4 (1) Filed an application for license in this state within the
5 previous ten years, which, as of the effective date of the license, was
6 incomplete in any material respect or contained incorrect, misleading,
7 or untrue information;

8 (2) Violated any provision in sections 385.200 to 385.220, or
9 violated any rule, subpoena, or order of the director;

10 (3) Obtained or attempted to obtain a license through material
11 misrepresentation or fraud;

12 (4) Improperly misappropriated, or converted any moneys or
13 properties received in the course of doing business;

14 (5) Been convicted of any felony involving moral turpitude;

15 (6) Used fraudulent, coercive, or dishonest practices, or
16 demonstrated incompetence, untrustworthiness, or financial
17 irresponsibility in the conduct of business in this state or elsewhere;

18 (7) Been found in violation of law by a court of competent
19 jurisdiction in an action instituted by any officer of any state or the
20 United States in any matter involving motor vehicle extended service
21 contracts, financial services, investments, credit, insurance, banking,
22 or finance;

23 (8) Had a producer license or its equivalent, denied, suspended,
24 or revoked in any other state, province, district, or territory;

25 (9) Signed the name of another to an application for license or
26 to any document related to a motor vehicle extended service contract
27 transaction without authorization;

28 (10) Unlawfully acted as a producer without a license;

29 (11) Failed to comply with an administrative or court order
30 imposing a child support obligation;

31 (12) Failed to comply with any administrative or court order
32 directing payment of state or federal income tax; or

33 (13) Has within the last fifteen years been declared insolvent by
34 the director or a motor vehicle extended service contract regulator of
35 another state or has been the subject of a bankruptcy petition.

36 2. In the event that the action by the director is not to renew or
37 to deny an application for a license, the director shall notify the
38 applicant or licensee in writing and advise the applicant or licensee of
39 the reason for the denial or nonrenewal. Appeal of the nonrenewal or

40 denial of the application for a license shall be made pursuant to the
41 provisions of chapter 621. Notwithstanding section 621.120, the
42 director shall retain discretion in refusing a license or renewal and
43 such discretion shall not transfer to the administrative hearing
44 commission.

45 3. The license of a business entity producer may be suspended,
46 revoked, renewal refused, or an application may be refused if the
47 director finds that a violation by an individual acting under the
48 direction of the business entity was known or should have been known
49 by one or more of the partners, officers, or managers acting on behalf
50 of the business entity and the violation was neither reported to the
51 director nor corrective action taken.

52 4. The director may also revoke or suspend pursuant to
53 subsection 1 of this section any license issued by the director where the
54 licensee has failed to renew or has surrendered such license.

55 5. Every producer licensed under this section shall notify the
56 director of any change of address, on forms prescribed by the director,
57 within thirty days of the change. If the failure to notify the director of
58 the change of address results in an inability to serve the producer with
59 a complaint as provided by sections 621.045 to 621.198, then the
60 director may immediately revoke the license of the producer until such
61 time as service may be obtained.

62 6. A producer shall report to the director any license revocation
63 or civil action taken against the producer in another jurisdiction or by
64 another governmental agency in this state within thirty days of the
65 final disposition of the matter. This report shall include a copy of the
66 order, consent order, or other relevant legal documents.

67 7. Within thirty days of the initial pretrial hearing date or
68 arraignment, a producer shall report to the director any felony
69 proceeding initiated by any state or the United States for any violation
70 of law by the producer. The report shall include a copy of the
71 indictment or information filed, the order resulting from the hearing
72 and any other relevant legal documents.

385.211. 1. A provider registered to issue motor vehicle extended
2 service contracts in this state shall maintain a register of business
3 entity producers who are authorized to sell, offer, negotiate, or solicit
4 the sale of motor vehicle extended service contracts in this state, and

5 shall make such list available for inspection upon request by the
6 director. Within thirty days of a provider authorizing a producer to
7 sell, offer, negotiate, or solicit motor vehicle extended service
8 contracts, the provider shall enter the name and license number of the
9 producer in the company registry of producers.

10 2. Within thirty days of a provider terminating a business entity
11 producer's appointment to sell, offer, negotiate, or solicit motor vehicle
12 extended service contracts, the provider shall update the registry with
13 the effective date of the termination. If a provider has possession of
14 information relating to any cause for discipline under section 385.209,
15 the provider shall notify the director of this information in
16 writing. The privileges and immunities applicable to insurers under
17 section 375.022 shall apply to providers for any information reported
18 under this subsection.

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Bill

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